



LEGAL BRIEFS

From the Fort Knox Legal Assistance Office

TENNESSEE DIVORCE LAW

GROUND FOR DIVORCE:

Tennessee provides for "fault" and "no-fault" divorce. Fault usually exists, if at all, in the form of misconduct by one of the parties. The misconduct may exist in the form of adultery, bigamy, desertion, inappropriate marital conduct, etc. In contrast, "no-fault" divorce requires "irreconcilable differences." That means there has been a breakdown of the marriage without reasonable prospect of reconciliation. In Tennessee, "no-fault" divorce is only possible in situations where the parties agree on all issues (a marital separation agreement must accompany the complaint for divorce), including child custody and division of property. If there is disagreement on any issue, the divorce must be grounded on "fault."

RESIDENCY REQUIREMENTS:

Tennessee residents and persons living in Tennessee for at least six (6) months may file for divorce.

NO SEPARATION REQUIREMENT:

Although not required, most couples separate prior to filing for divorce. You can agree to separate and remain in the same house.

DIVORCE ISSUES:

Typical issues include custody and visitation of children; payment of child support, award of spousal support (alimony); division of marital property; payment of marital debts; and allocation of dependent tax exemptions.

SPOUSAL SUPPORT:

Tennessee allows for the award of spousal support in some situations. The legislature has provided a statutory list of factors for the court to consider in deciding whether to order spousal support. The factors include fault and intangible contributions to the marriage. Other considerations may include expenses for job training and education, the couples' standard of living while married, and who will have custody of the children.

PROPERTY DIVISION:

Tennessee is a separate property state; only marital property can be divided. Marital property includes all property acquired from work during marriage, as well as any income from, or any increase in value to, property held during marriage, but acquired prior to the marriage. Equitable (fair) division is the goal. Fault is not a consideration.

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LENGTH OF THE DIVORCE PROCESS:

There is a waiting period for award of a "no-fault" divorce. Parties must wait 60 days if there are no children involved, and 90 days if there are children involved, between the initial filing date and the date the court will first hear the case. Once the case is heard, an uncontested case will take approximately 60-90 days to become finalized, depending on whether there are minor children involved. A contested divorce may take longer.

COMMONLY ASKED QUESTIONS:

Who gets to claim the children on the tax return? Normally the custodial parent claims the dependency exemption(s) for the child(ren). The parties can agree differently. If so, the noncustodial parent should get written authorization to claim the exemption(s). Also, the court can award the exemption(s) to the noncustodial parent or it can order that the exemption(s) be alternated annually. Second issue - the custodial parent usually claims the federal child tax credit and/or the credit for child and dependent care expenses.

Who determines the amount of child support to be paid? The parties may agree to an amount higher than, lower than, or equal to the state's child support guidelines. However, if the parties cannot agree, the court will determine the amount based on the state child support guidelines.

Are there other tax consequences from divorce? If spousal support (alimony) is ordered, the party paying the support can usually deduct it (an above-the-line adjustment to income) on his/her federal income tax return. The former spouse receiving the support will claim it as income on his/her return. In contrast, the payment of child support is a non-tax event. Neither party claims a benefit for paying or receiving the support.

Can spouses receive a portion of military retirement pay? Yes - under Tennessee law, military retirement pay is divisible marital property (Kendrick v. Kendrick - Tennessee Court of Appeals, 1994). The portion of retirement pay a spouse may be entitled to depends on the length of the marriage and the amount of time the marriage overlapped with military service. A common formula is the number of years of marriage divided by the number of years the marriage overlaps with the military service, multiplied by one-half (1/2). The court will usually retain jurisdiction over the case and defer division of the pension until the soldier retires and becomes eligible to collect on his/her retirement.

Can we both use the same civilian attorney? Yes - In an uncontested divorce, both spouses can use the same attorney. If both spouses feel the need to consult with an attorney, however, or if the spouses cannot agree on all of their important issues, the parties will need two attorneys. ***Who pays for the attorney?*** In an uncontested divorce, the parties can agree to split the cost of an attorney. In a contested divorce, each party will pay his/her own attorney's fees. The court can also order one spouse to pay all or some of the other spouse's attorney's fees.

WHAT LEGAL ASSISTANCE CAN DO:

We provide general information and preliminary counseling about the divorce process. You will need a civilian attorney licensed in Tennessee to handle your divorce. Please feel free to call us to schedule an appointment or for more information. Our telephone number is (502) 624-2771, and our hours of operation are Monday through Friday, 0800-1600. We are located in the Office of the Staff Judge Advocate, Building 1310, Pike Hall (north of the post office on Knox Street).